# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

## No. 618.

ROBERT L. GREENE, AUDITOR; SHERMAN GOODPASTER, TREASURER, AND JAMES P. LEWIS, SECRETARY OF STATE, CONSTITUTING THE BOARD OF VALUATION AND ASSESSMENT FOR THE STATE OF KENTUCKY, ET AL., APPELLANTS,

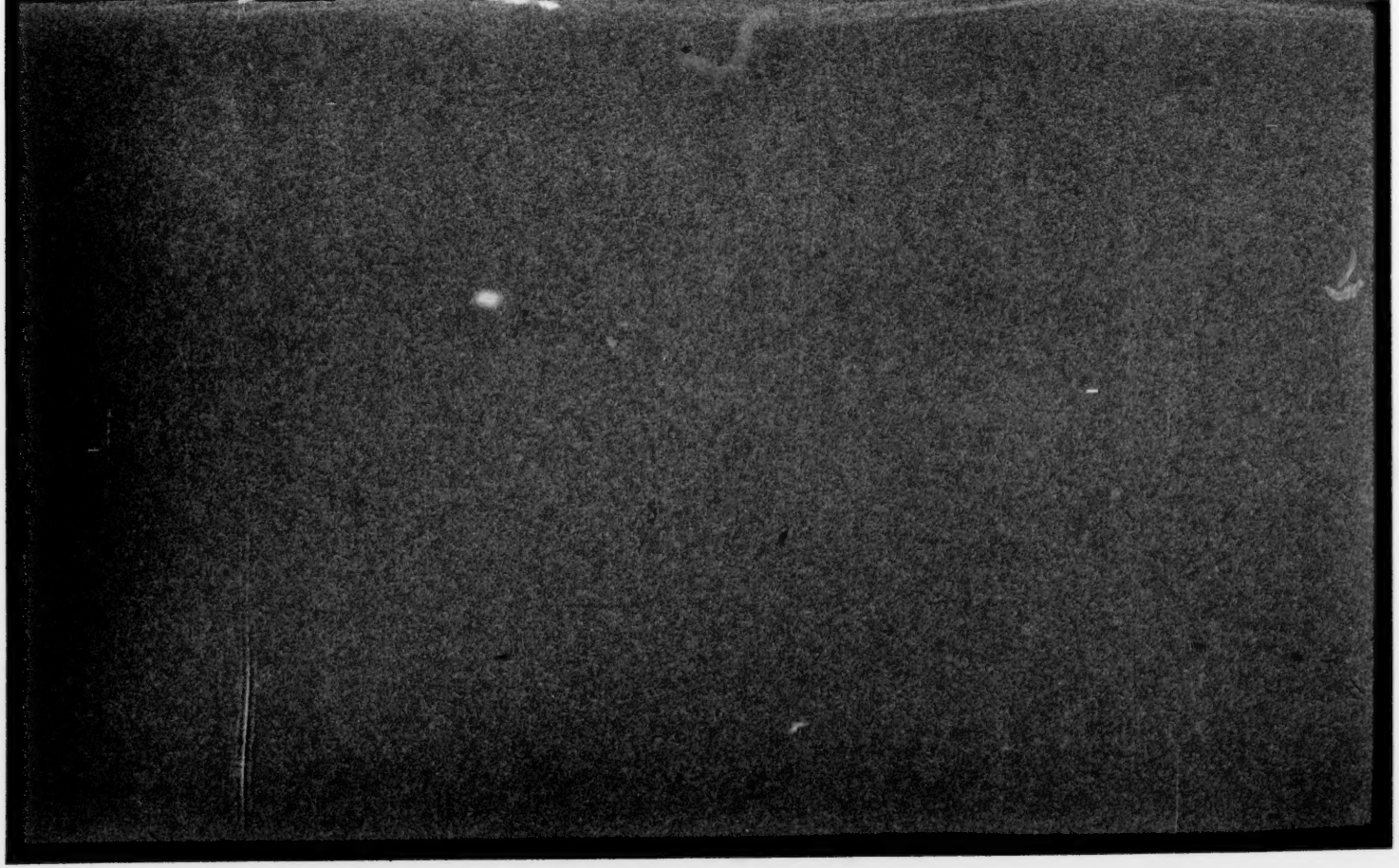
vs.

LOUISVILLE RAILWAY COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF KENTUCKY.

FILED AUGUST 17, 1916.

(25,448)



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 28, 1916.

1 UNITED STATES OF AMERICA:

The President of the United States to Louisville Railway Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within thirty days from the date hereof and pursuant to an appeal this day granted by the United States District Court for the Sixth Circuit and Eastern District of Kentucky, wherein you are plaintiff and now appellee, and Robert L. Greene, Sherman Goodpaster, James P. Lewis, Thomas M. Jones, M. M. Logan, Charles H. Morris, O. S. Hogan, D. O. Myatt, Victor A. Bradley and Wiley C. Marshall are defendants and now appellants, to show cause if any there be why the decree rendered against the said appellants as aforesaid should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States of America, this the 12 day of July, 1916, and of the independence of the United States the one hundred and fortieth.

[Seal United States of America, Eastern Kty. Dist. Court.]

A. M. J. COCHRAN,
*Judge of the District Court of the United States for the Sixth Circuit and the Eastern District of Kentucky.*

Filed July 19, 1916. J. W. Menzies, U. S. Clerk.

A copy of the within citation received this the 19 day of July, 1916.

ALEXIS P. HUMPHREY,
*Counsel for Plaintiff.*

2 Record of the Proceedings of the District Court of the United States for the Eastern District of Kentucky, in the cause and matter hereinafter stated, and the same being disposed of at a regular term of said Court, begun and held in the City of Frankfort on the second Monday in March, 1916, being the 13th day of said month, and the final decree in said cause being entered on the 13th day of June, 1916.

Present: Hon. A. M. J. Cochran, United States District Judge.

#811.

LOUISVILLE RAILWAY COMPANY, Plaintiff,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA, and CARL F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the State of Kentucky, et al., and Robert L. Greene, Sherman Goodpaster, and James P. Lewis, et al., Their Respective Successors, Defendants.

Said action was commenced on the 26th day of November 1915 and proceeded to final disposition at the term and day above written, and during the progress thereof, pleadings and papers were filed, process issued and returned, and orders of Court were made and entered in the order and on the dates hereinafter stated, to-wit:

On November 26, 1915, Complainant filed its Bill of Complaint the same being as follows, to-wit:

3 In the District Court of the United States for the Eastern District of Kentucky.

#811. Bill in Equity.

LOUISVILLE RAILWAY COMPANY, Plaintiff,
v.
HENRY M. BOSWORTH, THOMAS S. RHEA, and CARL F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the State of Kentucky; Henry M. Bosworth, Auditor of Public Accounts of the State of Kentucky; G. B. Likens, Assistant Auditor of Public Accounts of the State of Kentucky; James Garnett, Attorney-General of the State of Kentucky; M. M. Logan, First Assistant Attorney-General of the State of Kentucky; Charles H. Morris, Second Assistant Attorney-General of the State of Kentucky; O. S. Hogan, Third Assistant Attorney-General of the State of Kentucky; Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court, and Wiley C. Marshall, County Attorney of Franklin County of the State of Kentucky, Defendants.

1. The plaintiff, Louisville Railway Company, states that it is, and at all times hereinafter mentioned was, a corporation created

by and organized under and pursuant to the laws of the State of Kentucky; and that the defendants, and each and every one of them, are citizens of the State of Kentucky and inhabitants of the respective districts of Kentucky and residents of the State of Kentucky, as follows:

4 Said Henry M. Bosworth, Carl F. Crecelius, Victor A. Bradley, G. B. Likens, O. S. Hogan and Wiley C. Marshall are inhabitants of the Eastern District of Kentucky, and all the other defendants are inhabitants of the Western District of Kentucky, Henry M. Bosworth being a resident of Fayette County; Victor A. Bradley, a resident of Georgetown, Scott County; G. B. Likens, a resident of Frankfort in Franklin County; O. S. Hogan, a resident of Grant County; Wiley C. Marshall, a resident of Franklin County; Thomas S. Rhea, a resident of Russellville, Logan County; Carl F. Crecelius, a resident of Falmouth, Pendleton County; M. M. Logan, a resident of Edmonson County; and Charles H. Morris, a resident of Oldham County. Said Bosworth, Rhea, Crecelius, Likens, Garnett, Logan, Morris and Marshall now reside temporarily in the city of Frankfort, Franklin County.

The matter or amount in dispute in this suit greatly exceeds the sum or value of three thousand dollars ($3,000.00) exclusive of interest and costs, and arises under the Constitution of the United States—especially the Fourteenth Amendment thereof.

2. The defendants Bosworth, Rhea and Crecelius constitute, and at all the times hereinafter mentioned constituted, the Board of Valuation and Assessment of the Commonwealth of Kentucky; at all said times said Bosworth was Auditor of Public Accounts of said Commonwealth, and said Likens was Assistant Auditor thereof; said James Garnett was Attorney-General, and M. M. Logan, Charles H. Morris and O. S. Hogan were First, Second and Third Assistant Attorneys-General, respectively, of said Commonwealth; said Victor A. Bradley is and was at said times Commonwealth's Attorney for the Fourteenth Judicial District of Kentucky, including Franklin County; said Wiley C. Marshall is and was at all said times County Attorney of said Franklin County; and all said defendants

5 now hold the respective offices of which they are hereinabove alleged to have been the incumbents.

3. The plaintiff operates, and at all the times hereinafter mentioned operated, as a common carrier, passenger and freight lines of street railway in the city of Louisville and in Jefferson County outside of said city, its total mileage being 90.3 miles, of which 77.6 miles were in the city of Louisville and 12.7 miles were outside of said city, in Jefferson County.

4. On or before October 1, 1914, the plaintiff duly made and delivered to the defendant Bosworth, Auditor as aforesaid, a verified statement or report as prescribed by the Kentucky Statutes, especially Section 4077 and succeeding sections, correctly and truly setting out the information required by said statutes, and was ready to make whatever additional statement and give whatever additional information said Board of Valuation and Assessment might request of it.

The said Board of Valuation and Assessment made a preliminary

or tentative franchise valuation of plaintiff's property in Kentucky, and gave notice thereof to the plaintiff.

Within the thirty days allowed by law for a protest against said assessment the plaintiff did protest against the same, but notwithstanding said protest the said Board of Valuation and Assessment issued a final notice of assessment on November 5, 1915.

This assessment showed that the State Board of Valuation and Assessment had fixed the value of the capital stock of the plaintiff at $13,400,000.00 and had deducted therefrom the amount of tangible property assessed by the assessor for state taxes—$3,726,715.00, fixing the value of the franchise at $9,683,285.00 and had ascertained the taxes thereon as follows:

| | | |
|---|---|---|
| 6 | State tax generally—50 cents | $48,366.42 |
| | State road tax—5 cents | 4,836.64 |
| | A total of | $53,203.06 |

The plaintiff states that the said Board of Valuation and Assessment arrived at the above result by the following method: It appeared from the report of the plaintiff (and said report was correct) that the plaintiff had paid out in interest $594,166.66, and in dividends, $637,316.67. These, added together, made the sum of $1,231,483.33. But the said report showed that after deducting the above amount, expenses and taxes from the gross receipts, there was a deficit of $157,547.04. The Board deducted this amount from the interest and dividends paid, leaving a balance of $1,073,936.29. The Board then capitalized this amount at 6 per cent, took 75 per cent of the result, and then fixed the value of the capital stock at $13,400,000.00—substantially the result arrived at arithmetically by the above method.

The plaintiff states that it was pointed out to the said Bosworth, Rhea and Crecelius that $150,000.00 of the dividends paid out by it for the year in controversy were derived by the plaintiff from dividends on stock owned by it in the Louisville & Interurban Railroad Company, a corporation of the State of Kentucky, all of whose property is situated in this State and is duly assessed for taxation. If this $150,000.00 of dividends had been omitted from the plaintiff's report, the deficit would have been only $7,547.04, but the plaintiff says that excluding the $150,000.00 of such dividends and taking into consideration the said deficit would bring about, arithmetically, exactly the same result as is above stated, considering the whole $157,547.04 as a deficit.

5. The assessment made of the capital stock by the said Bosworth, Rhea and Crecelius, acting as members of the said State Board of Valuation and Assessment, subjects the plaintiff to state taxes
7 upon the whole of its capital stock—which, for the year in controversy, are at the rate of 55 cents on the $100; and to county taxes for Jefferson County on the whole of its capital stock—which, for the year in controversy, are at the rate of 29 cents on the $100; and, except where a small part of the capital stock of the plain-

tiff is embraced in a graded school district, to county school tax on so much of the said capital stock as is outside of the city of Louisville—which is 20 cents on the $100. It is these taxes—state, county and school—alone which are involved in this controversy.

6. The plaintiff states that for many years past, including the taxing year 1914-1915—the taxes for which are here in controversy, the local assessors of the State of Kentucky assessed the property of individuals and of corporations within their sphere of duty at less than 52 per cent of the fair cash value of said property, estimated at the price which it would bring at a fair and voluntary sale, and that the said assessing officers have for many years last past habitually, intentionally, systematically and generally assessed the property of individuals and of corporations within their sphere of duty that consists of 80 per cent of the total taxable property at not exceeding 52 per cent of the fair cash value of said property, estimated at the price which it would bring at a fair and voluntary sale. The fact of such systematic assessment upon this basis for every year for many years last past has been a matter of public notoriety in the State of Kentucky and has been stated and dwelt upon in the reports of the State Board of Equalization of the State of Kentucky and in the reports of a tax commission which was created and organized under House Resolution No. 24, Session of 1912 of the Legislature of the State of Kentucky, and which, under said resolution made its report as required thereby. And so it is that 80 per cent of the property in the State of Kentucky is made to pay state and
8 county taxes, including county and district school taxes, upon an average value of less than 52 per cent, whereas the said Bosworth, Rhea and Creecelius, acting as the State Board of Valuation and Assessment, after ascertaining what, in their judgment, was the fair cash value of plaintiff's capital stock, reduced said value only to the extent of taking 75 per cent thereof, instead of taking 52 per cent, the average rate applied by assessing officers to the vast body of property in this State.

7. The plaintiff states that in other cases pending in this court, this court has adjudged that the taxing officers of the State of Kentucky have habitually, intentionally, systematically and generally assessed the property of individuals and of private corporations in the State of Kentucky at 60 per cent, or less, of the fair cash value of said property, estimated at the price which it would bring at a fair and voluntary sale. The plaintiff says that this is true, and that, as stated above, the said officers have, for many years last past, habitually intentionally, systematically and generally assessed the property of individuals and of private corporations which as above composes 80 per cent of the taxable property at not exceeding 52 per cent of the fair cash value of said property, estimated at the price which it would bring at a fair and voluntary sale thereof; but that the said Bosworth, Rhea and Creecelius have denied plaintiff the benefit of equalization, to which it was entitled as aforesaid—to the great and irreparable damage of the plaintiff; that thereby the plaintiff has been by the said defendants deprived of its property without due process of law, and denied the equal protection of the law, in

violation of the Fourteenth Amendment to the Constitution of the United States, and in violation of the Constitution of the State of Kentucky and in disregard of the laws of said State; and plaintiff hereby sets up and relies upon the protection of said Federal
9 and State Constitutions and laws.

8. The plaintiff states that it is ready, and has always been ready, willing and able to pay all taxes due to the Commonwealth of Kentucky, and all county and school taxes; that it paid promptly all such taxes for all the years prior to the one in controversy; that it has paid the state and county taxes upon its tangible property for the year in controversy, and has also paid the state taxes upon its franchise as arrived at by taking the value of its capital stock as found by the capitalization method hereinbefore referred to and taking 60 per cent of such valuation; that is to say, the $13,400,000.00, being 75 per cent of the valuation of its capital stock arrived at by capitalizing at 6 per cent in the manner stated above, would realize the sum of $17,866,666.66; 60 per cent of this sum is $10,720,000.00; deducting from this sum the valuation of plaintiff's tangible property—$3,726,715.00, leaves the sum of $6,993,285.00; and the plaintiff has paid to the said Rhea, Treasurer of the State of Kentucky, through the said Bosworth, Auditor of the State of Kentucky, 55 cents on the $100 of this sum, which is $38,463.06, but the said sum has been received by the said persons only in part payment of the amount demanded.

9. The said Bosworth, Rhea and Crecelius threaten to and, unless immediately enjoined and restrained by this court, will (although they have not yet done so) certify to the county clerk of Jefferson County the amounts claimed to be due to said county and the taxing districts thereof by reason of the valuation aforesaid which said Bosworth, Rhea and Crecelius have assumed to make as above stated, and the said county clerk will thereupon certify said assessments, respectively, to the tax collectors for said county and the school districts therein, for collection, and said collecting officers will thereupon proceed to make collections and will institute unwarranted,
10 vexatious and multitudinous suits, actions and proceedings at law against plaintiff, and will from time to time institute and prosecute such suits, actions and proceedings, to the great annoyance and irreparable injury, cost and damage of the plaintiff; and unless immediately enjoined and restrained by this court the said Bosworth or the said Likens will enter in account with the said Treasurer of the State of Kentucky the amount of said taxes based upon the valuation aforesaid; and the said James Garnett as Attorney-General, and M. M. Logan, Charles H. Morris and O. S. Hogan as assistants, and said Victor A. Bradley and said Wiley C. Marshal will institute civil or penal actions or procure indictments against the plaintiff, based upon its assumed or supposed delinquency in the payment of taxes claimed to be due upon the illegal and unauthorized assessment aforesaid, and will bring such actions or proceedings or procure such indictments from day to day or from time to time, with the purpose of forcing the plaintiff to pay the illegal and unjust demands asserted against it on behalf of said Commonwealth and said local taxing dis-

tricts based upon the aforesaid valuation which said defendants have assumed to make as aforesaid, and the apportionment and certification thereof which will be made as aforesaid. The penalties for the alleged delinquency of the plaintiff, under Section 4091 of the Kentucky Statutes, are so extreme and enormous as to render it inequitable and unjust to require plaintiff to defend all or any of such actions or proceedings, and therefore the plaintiff is utterly without any adequate remedy at law for protecting its rights or presenting its defenses to said illegal claims made by defendants; that its remedy is only in equity and unless a preliminary injunction issue herein and be made perpetual upon final hearing, great and irreparable injury will result to plaintiff, which will be subjected to said
11 numerous actions and prosecutions, whereby it will be stripped of its property without due process of law; and unless a temporary restraining order issue immediately, the said defendants will make the said certifications to the said county clerks, and said local officers will notify plaintiff thereof and promptly proceed to collect the amounts of such illegal assessment, and will seize and otherwise appropriate plaintiff's property, to the destruction thereof and the destruction of plaintiff's business of transportation. The unauthorized and illegal valuation aforesaid constitutes a cloud and, as claimed by defendants, constitutes a lien upon plaintiff's property in the Commonwealth of Kentucky, and unless defendants are enjoined and restrained by this court numerous, repeated and vexatious suits will be instituted to enforce or foreclose such lien, claimed, as aforesaid, by defendants, in the endeavor to force payment of the aforesaid illegally claimed taxes which will be asserted by the defendants and local officers to be due the Commonwealth and said counties and taxing districts—to the great and irreparable injury and damage of the plaintiff.

Wherefore, and for as much as the plaintiff is remediless in the premises according to the common law, and its remedy is only in equity,—to the end that the plaintiff may not be subjected to a multiplicity of suits, which will result if the defendants be not enjoined and restrained by this court, and to the end that the plaintiff may be permitted to pursue and carry on its business without unlawful hindrance or obstruction, and the railroads operated by the plaintiff in the Commonwealth of Kentucky as aforesaid, and its other property therein, may not be subjected to illegal liens and clouds, the plaintiff prays that a writ of subpœna issue against the defendants and each and every one of them named and described
12 as aforesaid, to appear and full and true answer make to this bill of complaint, said Bosworth, Rhea and Crecelius stating in said answer the method whereby they reached the so-called final assessment aforesaid (of which notice was given the plaintiff on November 5, 1915), but not under oath, answer under oath being hereby waived; and said defendants, and each and every one of them, be enjoined by final decree, and meanwhile, by a preliminary injunction, as follows, to wit: That said Bosworth, Rhea and Crecelius, individually, or acting as the Board of Valuation and Assessment of Kentucky, be enjoined and restrained from

apportioning to the county clerk above referred to, or to any other officers of the said county or taxing districts in said county, the aforesaid so-called assessment, or any part thereof, for taxation or for extension of tax rates thereon; that said Bosworth, individually or as Auditor of Public Accounts of said State, be enjoined and restrained from certifying to the said county clerk or any other officers of the County of Jefferson the aforesaid so-called final assessment, or any part thereof; that the defendant Likens, Assistant Auditor, be likewise enjoined as herein prayed with respect to the said Bosworth; that the defendant Garnett, and the defendants Logan, Morris, Hogan, Bradley and Marshall be enjoined and restrained from instituting any action or procuring any indictment, warrant or other proceeding in court or at law to coerce the payment by plaintiff of any taxes upon the aforesaid illegal assessment, or any part thereof, whether on behalf of the Commonwealth or any county or taxing district, until the final order of this court; and that meanwhile a temporary restraining order issue in accordance with the prayer aforesaid for a preliminary injunction. And plaintiff prays for all other and further relief to which it may be entitled, including its costs herein incurred.

HUMPHREY, MIDDLETON & HUMPHREY,
*Attorneys for Plaintiff.*

13 STATE OF KENTUCKY,
*Jefferson County, ss:*

The affiant, T. J. Minary, states that he is President of the Louisville Railway Company, and the facts stated in the foregoing petition are true except the statement that the plaintiff has paid to the State of Kentucky the taxes for the year 1915, amounting to Thirty-eight thousand, four hundred and sixty-three and 6/100 ($38,463.06) Dollars.

T. J. MINARY.

Subscribed and sworn to before me by T. J. Minary this 24th day of November, 1915. My commission expires January 28, 1918.

LILLY R. WARREN,
*Notary Public, Jefferson County, Kentucky.*

STATE OF KENTUCKY,
*Franklin County, ss:*

The affiant, Alex. P. Humphrey, states that on this day, November 26, 1915, he has paid to the State of Kentucky the sum of Thirty-eight thousand, four hundred and sixty-three and 6/100 Dollars ($38,463.06) mentioned in the 8th paragraph of the petition, said payment being on account of said Louisville Railway Company.

ALEX. P. HUMPHREY.

Subscribed and sworn to before me by Alex. P. Humphrey
14 this 26th day of November, 1915. My commission expires —.

J. W. MENZIES, *Clerk,*
By C. N. WIARD, *D. C.*

15 On the same day, to-wit, on November 6, 1915, the following Subpœna in Chancery was issued herein, to-wit:

16 The President of the United States of America to Henry M. Bosworth, Thomas S. Rhea, and Carl F. Crecelius, individually and as constituting the Board of Valuation and Assessment of the State of Kentucky; Henry M. Bosworth, Auditor of Public Accounts of Kentucky; G. B. Likens, Assistant Auditor of Public Accounts of Kentucky; James Garnett, Att'y-Gen'l of Kentucky; M. M. Logan, First Ass't Att'y-Gen'l of Ky.; Chas. H. Morris, Second Ass't Att'y-Gen'l of Ky.; O. S. Hogan, Third Ass't Att'y-Gen'l of Ky.; Victor A. Bradley, Com'w'lths Att'y Franklin Circuit Court; Wiley C. Marshall, County Att'y Franklin Co., Ky., Greeting:

You are hereby commanded to appear before our District Court of the United States of America, for the Eastern District of Kentucky, at the Federal Court Hall, in the City of Frankfort, Ky., on or before the 20th day after service, excluding the day thereof to answer a Bill in Equity exhibited against them in our said Court, by Louisville Railway Company, which they shall in no wise omit, under the Penalty of the Law.

Witness the Honorable A. M. J. Cochran, Judge of the District Court of the United States of America, for the Eastern District of Kentucky, and the seal of our said Court hereto affixed, at the Clerk's office of said Court, at Frankfort this 26th day of November A. D. 1915 and in the 140th year of our Independence.

Attest-

[SEAL.]

J. W. MENZIES, *Clerk*,
By C. N. WIARD,
*His Deputy*.

NOTE.—Answer or other defense is required to be filed in the Clerk's office on or before the twentieth day after service, excluding the day thereof; otherwise, the bill may be taken pro confesso.

17 The foregoing Process was returned and filed on December 16, 1915, with the following return endorsed thereon, to-wit:

Received this Subpœna in Chancery at Lexington, Ky., on December 4, 1915, and executed the same in full on the same date by delivering a true copy hereof to each of the within named parties at Frankfort, Ky., excepting V. A. Bradley copy was delivered to him at Georgetown, Ky.

R. C. FORD,
*U. S. Marshal*,
By OSCAR VEST, *Deputy*.

On the day following to-wit, on December 3, 1915, the following order was entered herein, to-wit:

18 *Restraining Order.*

#811.

LOUISVILLE RAILWAY CO., Complainant,
vs.
HENRY M. BOSWORTH et al., Defendants.

Complainant, upon filing its bill herein, moved the Court to grant it an injunction pendente lite in accordance with the prayer in its bill, and said motion is now fixed for hearing on January 5, 1916, at Frankfort, in the State of Kentucky, and it having been made to appear by the averments of complainant's bill that there is danger of irreparable loss to complainant before the hearing of said application for said injunction can be had unless defendants herein are, pending said hearing, enjoined and restrained as prayed in complainants said bill; and defendants having had due notice of the application for a temporary restraining order.

It is therefore ordered that a temporary restraining order be, and it is, granted and that the defendants, Henry M. Bosworth, Thomas S. Rhea and Carl F. Crecelius, whether acting individually or as the Board of Valuation and Assessment of Kentucky, be and they are enjoined and restrained from apportioning to the County Clerk mentioned in the Bill of Complaint herein, or to any other officers of the County or taking districts in the county mentioned in the Bill of Complaint, the assessment mentioned in said Bill of Complaint which said defendants assumed to make for the year 1915 as therein alleged, or any part thereof, for taxation or for extension of tax rates thereon; that said Bosworth, whether acting individually or as Auditor of Public Accounts of said State, be and he is enjoined and restrained from certifying to the said County Clerk or any other officer or officers of the county men-
19 tioned in said Bill of Complaint the aforesaid so-called final assessment; that the said defendant, G. B. Likens, whether acting individually or as Assistant Auditor, be and he is likewise enjoined as is the said Bosworth; that the defendant James Garnett, whether acting individually or as Attorney General of the State of Kentucky, and the defendants, Charles H. Morris, M. M. Logan and O. S. Hogan, whether acting individually or as Assistant Attorney General of the State of Kentucky; and Victor Bradley, whether acting individually or as Commonwealth's Attorney, and Wiley C. Marshall, whether acting individually or as County Attorney for Franklin County, Kentucky, be and they are and each of them is enjoined and restrained from instituting or prosecuting any suit or procuring any indictment, warrant or proceeding in court or at law to coerce the payment by complainant of any taxes upon the assessment aforesaid, or any part thereof, whether on behalf of the Commonwealth or any county, city, town or taxing district, until the further order of this court; provided that the complainant pay to the proper collecting officers of the county,

towns and taxing districts of the county in which the railroad of complainant runs, as mentioned in its Bill of Complaint herein, within thirty (30) days after the said Auditor of Public Accounts of the Commonwealth of Kentucky shall have certified to the proper officers of said subdivisions the amounts to which they respectively may be entitled upon the basis of an assessment of $6,993,285, and notice to complainant of such amounts so certified and of such certification, the taxes so certified as payable to them.

And the said Henry M. Bosworth, Auditor, and G. B. Likens, Assistant Auditor, are enjoined and commanded to refrain from entering in account as a demand payable at the treasury of the Commonwealth of Kentucky any amount of taxes based on said assessment of complainant's franchise which said Board as-
20 sumed to make for the year 1915 at any greater total amount than the aforesaid $6,993,285, and to refrain from making any report to the Attorney General of any alleged delinquency arising from the failure of complainant to pay taxes to the State of Kentucky based on the assessment made for franchise taxation on behalf of said State for 1915, and to refrain from causing proceedings of any kind to be instituted against complainant because of its failure or refusal to pay franchise taxes for the year 1915 based upon said assessment; and the defendants aforesaid, whether acting individually or assuming to act in their official capacities respectively, are enjoined and commanded to refrain from instituting or prosecuting any proceeding or proceedings against the complainant, whether by indictment or civil action or otherwise, to recover taxes or penalties because of any alleged delinquency of complainant in failing to pay taxes based upon the assessment of valuation of its franchise for taxation which said defendants Bosworth, Rhea and Creecelius assumed to make.

And this restraining order shall be and remain in full force and effect until the further order of this court.

21 On December 3, 1915, the duly certified copy of foregoing Restrainin- Order was issued and same was returned and filed on Dec. 16, 1915, and the Marshal's return on the foregoing Restraining Order is as follows, to-wit:

Received this Restraining Order at Lexington, Ky., on December 4, 1915, and executed the same in full on the same date by delivering a true copy hereof to each of the within named parties at Frankfort, Ky., excepting V. A. Bradley copy was delivered to him at Georgetown, Ky.

R. C. FORD,
*U. S. Marshal.*
By R. C. FORD, *D. M.*

On the day following to-wit, on December 31, 1915, the following order was made and entered herein, to-wit:

811.

22 LOUISVILLE RAILWAY COMPANY, Plaintiff,
v.
HENRY M. BOSWORTH, &c., Defendants.

*Order.*

This day came the plaintiff, by counsel, and tendered and offered to file a supplemental bill herein, and the Court being advised, it is ordered that said bill be, and it is, filed.

Thereupon came the defendants named in said supplemental bill—Robert L. Greene, Sherman Goodpaster, James P. Lewis; the said Greene, Goodpaster and Lewis who will compose the Board of Valuation and Assessment of the State of Kentucky; M. M. Logan, —, Charles H. Morris, O. S. Hogan, D. O. Myatt, and Victor A. Bradley—all by M. M. Logan, Attorney-General and solicitor for himself and said other defendants, and entered their appearance herein; and it is now, by consent of all the defendants hereto, ordered, adjudged and decreed:

That the said defendant Robert L. Greene, immediately upon his accession to the office of Auditor of Public Accounts of the State of Kentucky, shall be substituted in the place and stead of his predecessor in office—the defendant Henry M. Bosworth;

That the defendant, —— ——, immediately upon his accession to the office of Assistant Auditor of Public Accounts of the State of Kentucky, shall be substituted in the place and stead of his predecessor in office—the defendant G. B. Likens;

That the defendant Sherman Goodpaster, immediately
23 upon his accession to the office of Treasurer of the State of Kentucky, shall be substituted in the place and stead of his predecessor in office—the defendant Thomas S. Rhea;

That the defendant James P. Lewis, immediately upon his accession to the office of Secretary of State of the State of Kentucky, shall be substituted in the place and stead of his predecessor in office—the defendant Carl F. Crecelius;

That said defendants Greene, Goodpaster and Lewis shall then be substituted for their several predecessors aforesaid, as members composing the Board of Valuation and Assessment of the State of Kentucky;

That the defendant, M. M. Logan, immediately upon his accession to the office of Attorney-General of the State of Kentucky, shall be substituted in the place and stead of his predecessor in office—the defendant James Garnett;

That the defendants Morris, Hogan and Myatt, respectively, shall be substituted in the place and stead of their predecessors in office, respectively—the defendants Logan, Morris and Hogan;

That the defendant Victor A. Bradley shall be substituted in the place and stead of the said Bradley—himself his predecessor in said office;

That all the allegations made by the plaintiff in this suit, in its original bill, with respect to the defendants Bosworth, Rhea and Crecelius, and with respect to the said defendants as members of the Board of Valuation and Assessment of the State of Kentucky, and all the allegations made as aforesaid with respect to the said Bosworth as Auditor of Public Accounts of the State of Kentucky, and to his assistant, and with respect to the said Garnett and his assistants, and with respect to the said Bradley, shall, in so far as they may be applicable, be construed and treated as specifically made with respect to the defendants Greene, Goodpaster and Lewis, and with respect to the said defendants as members of the Board of Valuation and Assessment aforesaid, and with respect to the said Greene as Auditor of Public Accounts of the State of Kentucky, and to his assistant, and with respect to the said Logan and his assistants, and with respect to the said Bradley;

That all orders heretofore entered in this suit shall be extended to and considered to embrace and apply to the said defendants Greene, Goodpaster and Lewis, and to the said defendants as members of said State Board of Valuation and Assessment, and to the defendant Greene as Auditor aforesaid, and to his assistant, and to all the other defendants to said supplemental bill, and to their assistants and agents after their induction into their respective offices, with the same force and effect with which they applied to their predecessors, respectively, during their incumbency of said offices, and with the same force and effect as if said orders were entered at this time, substituting the names of the defendants to the supplemental bill herein for the names of their predecessors, respectively;

And that this suit shall, immediately upon the induction into office of the defendants, made such by the supplemental bill herein, proceed against the said defendants—the said Greene as Auditor aforesaid; the said Goodpaster as Treasurer aforesaid; the said Lewis as Secretary of State aforesaid; the said Greene, Goodpaster and Lewis as constituting the State Board of Valuation and Assessment as aforesaid; the said Logan as Attorney-General aforesaid, and his said assistants; the said Bradley as Commonwealth's Attorney aforesaid; and the said —— —— as Assistant Auditor aforesaid—as fully as against their respective predecessors in office.

25 The motion for a preliminary injunction heretofore set for hearing on January 5, 1916, is now continued for hearing on and the temporary restraining order herein shall continue in effect until the further order of the Court.

26 The Supplemental Bill filed by the foregoing order on December 31, 1915, is as follows, to-wit:

27 In the District Court of the United States for the Eastern District of Kentucky.

#811.

LOUISVILLE RAILWAY COMPANY, Plaintiff,
v.
HENRY M. BOSWORTH, &c., Defendants.

*Supplemental Bill in Equity Bringing in the Following Additional Persons as Defendants.*

Robert L. Greene, who has been elected Auditor of Public Accounts of the State of Kentucky;

Sherman Goodpaster, who has been elected Treasurer of the State of Kentucky;

James P. Lewis, who has been elected Secretary of State of the State of Kentucky;

M. M. Logan, who has been elected Attorney-General of the State of Kentucky;

—— ——, who is to be appointed Assistant Auditor of Public Accounts of the State of Kentucky;

Charles H. Morris, who is to be appointed First Assistant Attorney-General of the State of Kentucky;

O. S. Hogan, who is to be appointed Second Assistant Attorney-General of the State of Kentucky;

D. O. Myatt, who is to be appointed Third Assistant Attorney-General of the State of Kentucky; and

Victor A. Bradley, who has been re-elected Commonwealth's Attorney for the Franklin Circuit Court.

28 The plaintiff, Louisville Railway Company, by way of supplemental bill, insisting upon all the allegations in its bill of complaint herein, now supplements the said bill by the following allegations, to wit:

That Robert L. Greene, Sherman Goodpaster and James P. Lewis were at the time of the filing of the bill of complaint herein, and now are, citizens of the State of Kentucky and residents in the Eastern District thereof;

That M. M. Logan, Charles H. Morris, O. S. Hogan, E. O. Myatt, —— —— and Victor A. Bradley were at the time of the filing of the bill of complaint herein, and now are, citizens of the State of Kentucky and residents in the Eastern District thereof;

That the respective terms of office of Henry M. Bosworth, Thomas S. Rhea and Carl F. Crecelius, as Auditor, Treasurer and Secretary of State, and as constituting the Board of Valuation and Assessment of the State of Kentucky as alleged in the original bill of complaint herein, and the terms of office of G. B. Likens, Assistant Auditor, James Garnett, Attorney-General, M. M. Logan, First Assistant Attorney-General, Charles H. Morris, Second Assistant Attorney-General, O. S. Hogan, Third Assistant Attorney-General, and Victor

A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court, will expire on the 3rd day of January, A. D. 1916, when their successors, respectively, will succeed them in said offices;

That at the General election held in the State of Kentucky on November 2, 1915, the defendant Greene was elected Auditor of Public Accounts of the State of Kentucky; the defendant Goodpaster was elected Treasurer of the State of Kentucky; the defendant Lewis was elected Secretary of State of the State of Kentucky; the defendant Logan was elected Attorney-General of the State of Kentucky; and the defendant Bradley was re-elected Com-
29 monwealth's Attorney for the Franklin Circuit Court; that the terms of all these officers will begin on January 3, 1916, and that each of them has received his certificate of election and is prepared to qualify; and that when inducted into office the said Greene, Goodpaster and Lewis will compose the State Board of Valuation and Assessment of the State of Kentucky;

That the plaintiff is informed, and so states the fact to be, that the said M. M. Logan will appoint as his first assistant the said Charles H. Morris, as his second assistant the said O. S. Hogan, and as his third assistant the said D. O. Myatt; and that the said Greene will appoint —— —— as Assistant Auditor of Public Accounts of the State of Kentucky;

That a restraining order has been heretofore issued and served upon each of the defendants originally made such to the bill of complaint herein, the said restraining order being in the terms of the prayer of the said bill; and that a motion for a temporary injunction herein has been entered and assigned for hearing on January 5, 1916;

That the said several persons above mentioned have been elected or appointed, or will be appointed, as successors to the defendants named in the bill herein, according to the respective offices described in the original bill of complaint and as stated in this supplemental bill of complaint, and that the said several defendants named herein will, under color of their official powers, and each of them will, do and perform the several acts and things which the bill of complaint herein alleged were about to be done and performed by their predecessors in office;

That therefore it is necessary that the same restraining orders and temporary and final injunctions be entered as against the new defendants made such by this supplemental bill as were made or prayed to be made against the original defendants herein.

30 The plaintiff therefore prays that the said several persons above named be now made parties defendant hereto and that they be substituted for their predecessors—each according to the office and duties of his predecessor; that this cause proceed without abatement against these new defendants and such of the old defendants as have not gone out of office; that a restraining order be issued and served upon each of these new defendants in the same terms as the restraining order heretofore issued herein, and that this cause be set down for January 5, 1916, for the hearing of the motion for a temporary injunction herein; and that the plaintiff

have all the relief against the new defendants, made such by this supplemental bill, as you prayed against the original defendants, and against the three defendants acting as the State Board of Valuation and Assessment, and also that it have process against the said new defendants in the same manner in which process was awarded against the original defendants, requiring the said new defendants to answer herein, but not under oath; and, generally, that this cause proceed with the same force and effect against the new defendants as if they had been properly joined as defendants in the original bill of complaint herein.

Plaintiff prays for all further relief.

HUMPHREY, MIDDLETON & HUMPHREY,
*Attorneys for Plaintiff.*

31 On a day following, to-wit, on March 13, 1916, the following order was made and entered herein, to-wit:

#811.

LOUISVILLE RAILWAY COMPANY
vs.
H. M. BOSWORTH et al.

This day came the complainant, by solicitors, and tendered and offered to file a second supplemental bill herein, and the court being advised, it is ordered that said bill be, and it is filed.

Then came the defendant named in said supplemental bill, T. M. Jones, by M. M. Logan, Attorney General and solicitor for defendants, and entered his appearance herein; and it is now, by consent of all parties hereto, ordered, adjudged and decreed that the said defendant T. M. Jones, be substituted in place of his predecessor in office as Assistant Auditor of Public Accounts for the State of Kentucky, Defendant, G. B. Likens, and that all parties brought into this cause by said second supplemental bill and the supplemental bill filed herein December 31, 1915, whether as entirely new parties, or as old parties holding new offices, shall take herein the places exactly of their respective predecessors in office and be respectively affected exactly as they were respectively affected by all pleadings, proofs and orders herein, including the preliminary order of injunction and all other steps taken and proceedings had in this cause.

This day came the parties by counsel and time until May 15, 1916, is given defendants to plead herein and the motion for the preliminary injunction is continued until that day. In all other respects the cause shall stand on the order entered herein December 31, 1915.

32 Said Second Supplemental Bill filed by the foregoing order on March 13, 1916, is as follows, to-wit:

*Second Supplemental Bill.*

In the District Court of the United States for the Eastern District of Kentucky.

In Equity. No. 811.

LOUISVILLE RAILWAY COMPANY, Complainant,
v.
H. M. BOSWORTH et al., Defendants.

The complainant, Louisville Railway Company, by way of a second supplemental bill, and insisting upon all the allegations in its bill of complaint and supplemental bill of complaint herein, now again supplements its said bill by the following allegations, to wit:

That defendants Robert L. Greene, Sherman Goodpaster and James P. Lewis have qualified respectively as Auditor, Treasurer and Secretary of State of the Commonwealth of Kentucky, and have, since January 3, 1916, composed and now compose the State Board of Valuation and Assessment of the State of Kentucky, and said Greene has been since that date and is now ex-officio the Chairman of said Board.

That Thomas M. Jones, who is a citizen of the State of Kentucky and a resident of the Eastern District thereof, has been appointed and qualified and is now acting as the Assistant Auditor of the State of Kentucky, and said Jones is now made a defendant herein.

That defendant M. M. Logan has qualified as Attorney General of the State of Kentucky, and has, since January 3, 1916, been acting and is now acting as such.

That said M. M. Logan, on January 3, 1916, appointed defendants Charles H. Morris, O. S. Hogan and D. O. Myatt as,
33 respectively, First, Second and Third Assistant Attorney-General, who, since their said appointment, have duly qualified and have continued to act and are now acting as such officers.

That defendant Victor A. Bradley qualified on the same day as Commonwealth's Attorney for the district wherein Franklin County is situate, under the new term for which he was elected, and has since continued to act and is now acting as such.

The complainant repeats all the allegations contained in its original and in its supplemental bill of complaint, and prays as is prayed in each of said pleadings and for all further relief to which in equity the complainant may appear to be entitled.

HUMPHREY, MIDDLETON & HUMPHREY,
*Attorneys for Complainant.*

STATE OF KENTUCKY,
*County of Jefferson, set:*

Thomas J. Minary says that he is President of Complainant, the Louisville Railway Company, and that the statements contained in the foregoing second supplemental bill are true.

T. J. MINARY.

Subscribed and sworn to before me by Thomas J. Minary this 11th day of March, 1916. My commission expires January 18, 1920.

CLARENCE DALLAN,
*Notary Public, Jefferson County, Kentucky.*

34 On a day following to-wit, on May 15, 1916, the order was made and entered herein, to-wit:

#811.

LOUISVILLE RAILWAY COMPANY
vs.
H. M. BOSWORTH et al.

Came the parties by their attorneys, whereupon defendants by attorneys filed and entered a motion to dismiss plaintiff's Bill in Equity and all amendments thereto to which the plaintiff objected. Said motion to dismiss filed by the foregoing order is as follows, to-wit:

35 *Motion to Dismiss.*

In the District Court of the United States for the Eastern District of Kentucky.

In Equity. No. 811.

LOUISVILLE RAILWAY COMPANY, Plaintiff,
vs.
H. M. BOSWORTH and Others, Defendants.

Come the defendants and each of them and move this court to dismiss plaintiff's bill in equity, and all amendments thereto, for the following reasons, to-wit:—

1. There is no Federal question involved or shown in plaintiff's pleadings, and this court, therefore, has no jurisdiction to hear or determine any of the questions attempted to be raised in this action.
2. The bill states no cause of action against the defendants, nor either of them, under the laws of this State or under the laws of the United States.
3. If the things of which plaintiff complains should be true, plaintiff has an adequate remedy at law.
4. The bill and amended bills show no equity on their face.
5. Because this action is a suit against the State of Ky.

Wherefore, the defendants pray that the court dismiss the
36 bill and amended bills, and that they have judgment for cost against the plaintiff, and for all proper relief.

M. M. LOGAN.

The affiant, M. M. Logan, says that he is Attorney General of the State of Kentucky, and that as such it is his duty to represent

the defendants in this cause of action. He makes this motion in good faith and believes that it is well founded.

M. M. LOGAN.

Subscribed and sworn to before me by M. M. Logan, Attorney General, this May 13, 1916.

MATTIE B. NORRIS,
*Notary Public, Franklin County, Kentucky.*

37 On a day following to-wit, on June 13, 1916, the following Final Judgment was entered herein, to-wit:

38 *Final Judgment.*

— 811.

LOUISVILLE RAILWAY COMPANY, Complainant,
v.
H. M. BOSWORTH et al., Defendants.

This cause came on to be heard this day upon the original bill of complaint filed herein as well as on the supplemental bill of complaint filed December 30, 1915, and the second supplemental bill of complaint filed March 13, 1916, and upon the various orders hereinbefore entered, and upon the motion of the defendants, in writing, filed herein May 15, 1916, said motion being to dismiss this bill of complaint and the supplemental bills of complaint upon the grounds stated in said motion. And the court being now advised it is considered by the court that said motion be and it is hereby overruled; to which the defendants except.

And thereupon came the defendants and each of them by counsel and declined to plead further herein and made no objection to the submission of this case for final decree.

And thereupon the court being advised it is considered that the allegations of the said pleadings above mentioned not being denied are to be taken as true and relief granted accordingly.

It is therefore considered by the court that the defendants, Robert L. Greene, Sherman Goodpaster and James P. Lewis, who are respectively Auditor, Treasurer and Secretary of State of the Commonwealth of Kentucky, and have, since January 3, 1916, composed and now compose the State Board of Valuation and Assessment of the Commonwealth of Kentucky, and their successors in office, be and they are and each of them is hereby perpetually enjoined and re-

39 strained from apportioning to the county clerk of Jeeffrson County or any other officer or officers of the county or taxing district in the county mentioned in the bill of complaint, the assessment mentioned in said bill of complaint (which was assumed to be made by their predecessors in office, for the year 1915, as alleged in said pleadings), or any part thereof, except to the extent of $6,993,285, for taxation or for the extension of tax rates thereon;

That said Greene, and any successor in office, whether acting individually or as Auditor of Public Accounts of said Commonwealth, be and he is hereby perpetually enjoined and restrained from certifying to the said County Clerk or any other officer or officers of the county mentioned in said bill of complaint, the aforesaid so-called final assessment, except to the extent above mentioned;

That the defendant, Thomas M. Jones, and any successor in office, whether acting individually or as Assistant Auditor, be and he is likewise perpetually enjoined and restrained as is the said Greene;

That the defendant, M. M. Logan, and any successor in office, whether acting individually or as Attorney-General of the Commonwealth of Kentucky; and the defendants, Charles H. Morris, O. S. Hogan and D. O. Myatt, and their successors in office, whether acting individually or as Assistant Attorney-General of the Commonwealth of Kentucky; and the defendant, Victor A. Bradley, and any successor in office, whether acting individually or as Commonwealth's Attorney, be and they are and each of them is perpetually enjoined and restrained from instituting or prosecuting any suit or procuring any indictment, warrant or proceeding in court or at law to coerce the payment by complainant of any taxes upon the assessment aforesaid or any part thereof, except to the extent above stated, whether on behalf of the Commonwealth or any county, city, town or taxing district.

And the said Robert L. Greene, Auditor, and Thomas M. Jones, Assistant Auditor, and their successors in office, are perpet-
40 ually enjoined and commanded to refrain from entering in account as a demand payable at the treasury of the Commonwealth of Kentucky any amount of taxes based on said assessment of complainant's franchise which the persons then composing the State Board of Valuation and Assessment assumed to make for the year 1915, at any greater total value than the aforesaid $6,993,285, and to refrain from making any report to the Attorney-General of any alleged delinquency arising from the failure of the complainant to pay taxes to the State of Kentucky based on the assessment made for franchise taxation on behalf of said State for 1915; and to refrain from causing proceedings of any kind to be instituted against complainant because of its failure or refusal to pay franchise taxes for the year 1915 based upon a franchise assessment greater than the amount above indicated, to wit, $6,993,285; and each and all of the defendants aforesaid, and their successors in office, whether acting individually or assuming to act in their official capacities respectively, are perpetually enjoined and commanded to refrain from instituting or prosecuting any proceeding or proceedings against the complainant, whether by indictment or civil action or otherwise, to recover taxes or penalties because of any alleged delinquency of complainant in failing to pay taxes based upon the assessment or valuation of its franchise for taxation at the sum of $9,673,285, or any sum greater than $6,993,285.

41 On a day following to-wit, on July 12, 1915 the following order was made and entered herein, to-wit:

# 811.

LOUISVILLE RAILWAY COMPANY
vs.
HENRY M. BOSWORTH et al. and ROBERT L. GREENE et al., Their Successors.

This day came the defendants by M. M. Logan and Charles Carroll, their attorneys and filed herein and presented to the court their petition for appeal and assignment of errors intended to be urged by them, praying, also, that a transcript of the record and proceedings and papers upon which the decree herein was rendered, duly authenticated, be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the court does allow the appeal upon the defendants giving bond according to law, in the sum of $1,000.00.

Came the defendants by its attorneys, and presented to the court a bond on appeal herein, and same is approved by the court and ordered filed and the appeal allowed.

Said Petition for Appeal and Assignment of Errors and Bond and Citation are as follows, to-wit:

42 Filed Jul- 12, 1916. J. W. Menzies, U. S. Clerk.

District Court of the United States for the Eastern District of Kentucky.

No. 811.

LOUISVILLE RAILWAY COMPANY, Plaintiff,
v.
HENRY M. BOSWORTH and Others, Defendants.

*Petition for Appeal.*

The defendants, Robert L. Greene, Auditor, Sherman Goodpaster, Treasurer, James P. Lewis, Secretary of State, constituting the Board of Valuation and Assessment for the State of Kentucky, M. M. Logan, Attorney General of the State of Kentucky, Charles
43 H. Morris, First Assistant Attorney General, O. S. Hogan, Second Assistant Attorney General, D. O. Myatt, Third Assistant Attorney General, Thomas M. Jones, Assistant Auditor, Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court, and W. C. Marshall, County Attorney of Franklin County, feeling themselves aggrieved by the decree entered in this suit on the 13th day of June, 1916, hereby appeal from the said decree to the Supreme Court of the United States and pray that their appeal may be allowed, and that a transcript of the record and proceedings and paper upon which the said decree was made, duly authenticated, may be sent to the Supreme Court of the United States, and they assign for error.

1. The action of the court in overruling defendants' motion to

dismiss on the grounds that this court does not have jurisdiction to hear this cause;

2. The action of the court in overruling defendants' motion to dismiss on the grounds the bill of complaint shows no equity on its face;

3. The action of the court in overruling defendants' motion to dismiss on the grounds that plaintiff has an adequate remedy at law;

4. The action of the court in overruling defendants' motion to dismiss on the grounds the bill and amended bills show no equity on their face.

43½ 5. The action of the court in overruling defendants' motion to dismiss on the grounds that the bill states no cause of action against the defendants or either of them under the laws of this State or under the laws of the United States.

6. The action of the court in overruling defendants' motion to dismiss on the grounds that this is a suit against the State of Kentucky.

7. The action of the court in holding in the decree that plaintiff's property should not be assessed at more than 60 per cent of its fair cash value estimated at the price it would bring at a fair voluntary sale for the supposed reason that other property in the State, or a great bulk of the other property in the State, is habitually assessed at not more than 60 per cent of its fair cash value estimated at the price it would bring at a fair voluntary sale.

8. The action of the court in granting a decree enjoining the collection of taxes by the State of Kentucky and the county and taxing districts in the State based upon an assessment greater than 60 per cent of the fair cash value of plaintiff's property estimated at the price it would bring at a fair voluntary sale.

Wherefore, the defendants pray that the decree of the District Court be reversed.

M. M. LOGAN,
*Attorney General,*
*Counsel for Defendants.*

44 Appeal allowed as prayed for, bond in the penalty of $1,000.00, July 12, 1916.

A. M. J. COCHRAN,
*Judge of the District Court of the United States, Sixth Circuit and the Eastern District of Kentucky.*

45 Filed Jul- 12, 1916. J. W. Menzies, U. S. Clerk.

District Court of the United States for the Eastern District of Kentucky.

No. 811.

LOUISVILLE RAILWAY COMPANY, Plaintiff,
v.
HENRY M. BOSWORTH and Others, Defendants.

*Bond.*

Know all men by these presents, that we, Robert L. Greene, Auditor, Sherman Goodpaster, Treasurer, James P. Lewis, Secretary

of State, M. M. Logan, Attorney General, Charles H. Morris, First Assistant Attorney General, O. S. Hogan, Second Assistant Attorney General, D. O. Myatt, Third Assistant Attorney General, T. M. Jones, Assistant Auditor, Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court and Wiley C. Marshall, County
46 Attorney of Franklin County, as principals, and Robert L. Greene, Sherman Goodpaster, James P. Lewis and M. M. Logan, sureties, acknowledge ourselves to be jointly indebted to the Louisville Railway Company, appellee in the above cause, in the sum of $1,000.00, conditioned that whereas on the 13th day of June 1916, in the United States District Court for the Eastern District of Kentucky, in a suit depending in that court wherein the above mentioned principals were defendants and the Louisville Railway Company was plaintiff, numbered on the equity docket as 811, a decree was rendered against the said above mentioned principals, and they having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the office of the clerk of the court to reverse the said decree, and a citation directed to the said Louisville Railway Company citing and admonishing it to be and appear at a session of the Supreme Court of the United States to be holden in the City of Washington on the 11 day of August 1916. If the said above mentioned principals shall prosecute their appeal to effect and answer all cost if they fail to make plea good then the above obligation to be void, else to remain in full force and virtue.

ROBERT L. GREENE,
*Auditor;*
SHERMAN GOODPASTER,
*Treasurer;*
JAMES P. LEWIS,
*Secretary of State;*
M. M. LOGAN,
*Attorney General;*
CHARLES H. MORRIS,
*1st Ass't Att'y Gen'l;*
O. S. HOGAN,
*2nd Ass't Att'y Gen'l;*
D. O. MYATT,
*3rd Ass't Att'y Gen'l;*
T. M. JONES,
*Assistant Auditor;*
VICTOR A. BRADLEY,
*Commonwealth's Attorney for the Franklin Circuit Court;*
WILEY C. MARSHALL,
*County Attorney of Franklin County;*
By M. M. LOGAN,
*Attorney General,*
*Counsel for Appellants.*

M. M. LOGAN.
ROBERT L. GREENE.
SHERMAN GOODPASTER.
JAMES P. LEWIS.

47 Filed Jul- 12, 1916. J. W. Menzies, U. S. Clerk.

On July 12, 1916 the following præcipe was filed herein to-wit:

United States District Court for the Eastern District of Kentucky.

# 811.

LOUISVILLE RAILWAY COMPANY, Plaintiff,
vs.
H. M. BOSWORTH and Others, Defendants.

*Præcipe.*

The Clerk is directed to make a complete transcript of the record in this case, including all pleadings, exhibits and orders.

Given under my hand this July 12, 1916.

M. M. LOGAN,
*Attorney General.*

Approved this July 12, 1916.
ALEX. P. HUMPHREY,
*Attorney for Plaintiff,*
*Appellee on This Appeal.*

48 UNITED STATES OF AMERICA,
*Eastern District of Kentucky, ss:*

I, John W. Menzies, Clerk of the District Court of the United States for the Eastern District of Kentucky, do hereby certify *that* the foregoing 47 pages to be a full, true and correct transcript of the record in the cause lately pending in the said Court wherein Louisville Railway Company was Complainant and Henry M. Bosworth et al. and Robert L. Greene et al. their successors were Defendants, in Equity No. 811, as required by the præcipe of the party removing the case, which is approved by appellee, as the same appears on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand as Clerk of the aforesaid Court, and affixed the seal thereof, at Frankfort, in said District, this the 31st day of July, A. D. 1916, and of the Independence the 141 *the* year.

[Seal United States of America, Eastern Kty. Dist. Court.]

JOHN W. MENZIES,
*Clerk United States District Court, Eastern District of Kentucky,*
By CHAS. N. WIARD,
*Deputy Clerk.*

Endorsed on cover: File No. 25,448. E. Kentucky D. C. U. S. Term No. 618. Robert L. Greene, Auditor: Sherman Goodpaster, Treasurer, and James P. Lewis, Secretary of State, constituting The Board of Valuation and Assessment for the State of Kentucky, et al., appellants, vs. Louisville Railway Company. Filed August 17th, 1916. File No. 25,448.

Office Supreme Court, U.
FILED
SEP 26 1916
JAMES D. MAHER
CLERK

# Supreme Court of the United States

NO. 617.

Robert L. Greene, Sherman Goodpaster, and James P. Lewis, respectively, Auditor, Treasurer and Secretary of State of the Commonwealth of Kentucky,

M. M. Logan, Attorney General of Kentucky,

Charles H. Morris, O. S. Hogan and D. O. Myatt, Assistant Attorneys General of Kentucky,

Victor A. Bradley, Commonwealth's Attorney of 14th Judicial District of Kentucky, and

Thomas M. Jones, Assistant Auditor of Kentucky, - - - - - - - - - Appellants,

versus

Louisville & Interurban Railway Company, Appellee.

and

NO. 618.

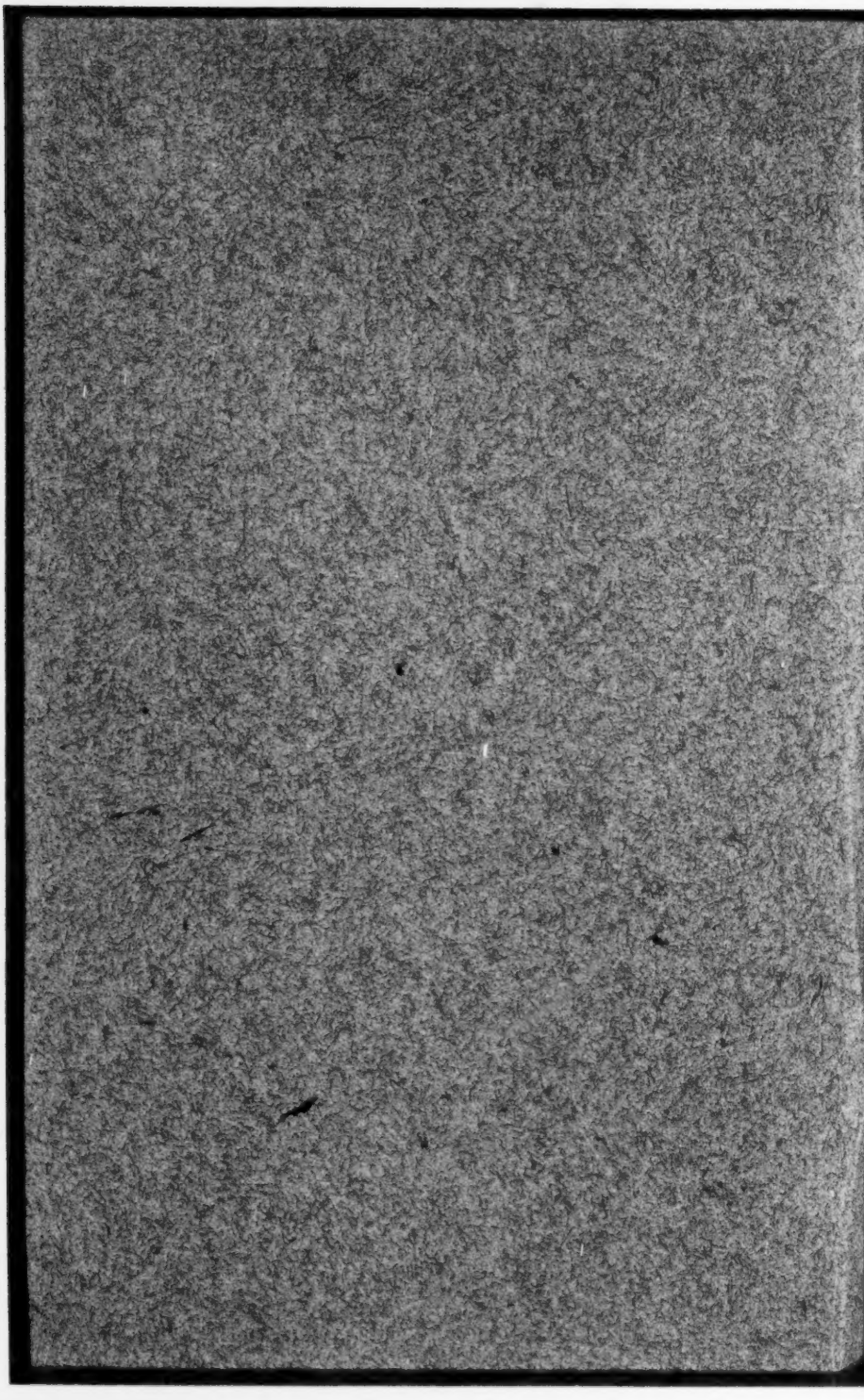
Same Appellants, - - - - - - - - - Appellants,

versus

Louisville Railway Company, - - - - - Appellee.

## MOTION AND GROUNDS TO HAVE BOTH CASES HEARD TOGETHER AND ADVANCED ON THE DOCKET, AND ASSIGNED TO A DAY FOR ORAL ARGUMENT

M. M. LOGAN, Attorney General;
CHARLES CARROLL,
For Appellants.



# Supreme Court of the United States

No. 617.

ROBERT L. GREENE, SHERMAN GOODPASTER, and JAMES P. LEWIS, respectively, Auditor, Treasurer and Secretary of State of the Commonwealth of Kentucky,

M. M. LOGAN, Attorney General of Kentucky,

CHARLES H. MORRIS, O. S. HOGAN and D. O. MYATT, Assistant Attorneys General of Kentucky,

VICTOR A. BRADLEY, Commonwealth's Attorney of 14th Judicial District of Kentucky, and

THOMAS M. JONES, Assistant Auditor of Kentucky, - - - - - - - - - - - - *Appellants,*

versus

LOUISVILLE & INTERURBAN RAILWAY COMPANY, *Appellees.*

and

No. 618.

SAME APPELLANTS, - - - - - - - - - - *Appellants,*

versus

LOUISVILLE RAILWAY COMPANY, - - - - - *Appellees.*

## MOTION AND GROUNDS TO HAVE BOTH CASES HEARD TOGETHER AND ADVANCED ON THE DOCKET AND ASSIGNED TO A DAY FOR ORAL ARGUMENT.

Come appellants, Robert L. Greene, Auditor of the State of Kentucky, Sherman Goodpaster, Treasurer of the State of Kentucky, and James P. Lewis, Secretary of State of the State of Kentucky, constituting the Board of Valuation and Assessment of the State of Kentucky, M. M. Logan, Attorney General of the State of Kentucky, Charles H. Morris, O. S. Hogan, D. O. Myatt, Assistant Attorneys General of the State of Kentucky, Victor A. Bradley, Commonwealth's Attorney of the State of Kentucky, and Thomas M. Jones, Assistant Auditor of the State of Kentucky, and move the court to order above cases to be heard together and to advance same on the docket and assign them to a day for oral argument.

Appellants say that they are officers of the State of Kentucky and appellants, R. L. Greene, Auditor, Sherman Goodpaster, Treasurer, and James P. Lewis, Secretary of State, are charged, among other things, with the duty of assessing for taxation the franchises of the various corporations in the State of Kentucky having franchises, and of certifying to the proper officers the result of said assessment, and the other appellants are charged, among other things, with the duty of enforcing the collection of said taxes so assessed upon said franchises. Appellants say that the appellees herein are corporations incorporated under the laws of Kentucky and doing business exclusively in Kentucky as common carriers of freight and passengers and that as such corporations they have under the laws of the State of Kentucky a franchise which is subject to taxation and which is assessed for taxation by the Board of Valuation and Assessment for the

State of Kentucky, which board consists of the Auditor, Treasurer and Secretary of State. That for the year 1915, franchises of said corporations were so assessed for taxation under and by virtue of the Constitution of the State of Kentucky and the laws enacted in conformity thereto, which Constitution provides that all property shall be assessed for taxation at its fair cash value estimated at the price it would bring at a fair voluntary sale, and when appellants in the discharge of their duties as officers of the State of Kentucky sought to take such steps as were necessary to enforce the collection of the amount of taxes due the State upon said assessments, suits were filed against them and each in their official capacity by appellees in the District Court of the United States for the Eastern District of Kentucky. In the petitions of said suits it was substantially alleged that the franchises of plaintiffs in said actions (appellees herein) were assessed at their actual cash value by the Board of Valuation and Assessment and taxes were sought to be collected from them upon said valuation and that the property of other tax payers in the State of Kentucky which ~~were~~ assessed by the County Assessors of the county in which the property was situated, was assessed at only sixty (60%) per cent. of its acutal cash value by the County Assessors, and that the attempt to collect said taxes upon said valuation was a taking of the property of appellees (plaintiffs) without due process of law, and denying the equal protection of the law, in violation of the fourteenth amendment to the Constitution of the United States and in violation of the Constitution of the State of Kenucky, and the district court was asked to enjoin the collection of any tax upon plaintiff's franchises in excess of 60% of the value thereof. Appellants say they have no control over the County Assessors in the matter of assessing property for taxation.

The appellants (defendants below) moved to dismiss those petitions upon the grounds: (1) There were no Federal questions involved; (2) That the bill stated no cause of action against the defendants or either under the laws of Kentucky or the United States; (3) That the plaintiffs (appellees herein) had an adequate remedy at law; (4) The bills showed no equity on their faces; (5) Because the actions were suits against the State of Kentucky.

The district court overruled the motions to dismiss and defendants (appellants herein) declined to plead further and judgment was entered against defendants (appellants herein) enjoining and restraining them or any from taking any steps towards the collection from appellees, or either, of any sum by way of taxes on the franchises of appellees greater than upon a valuation of sixty per cent. of the value of said franchises, and from those judgments these appeals are prosecuted.

Appellants say there are numerous suits pending in the United States District Court for the Eastern District of Kentucky by other corporations who have franchises seeking to enjoin appellants as officials of the State of Kentucky, from fixing a ~~greater~~ valuation upon said corporations for taxing purposes in excess of 60% of the value of same or from attempting to collect upon said franchises, taxes upon a greater value than 60% of the value of same, and in some of those suits judgments have been rendered by said court sustaining this contention and from said judgments appeals are being perfected, and numerous other corporations than those which have filed suits are threatening to and will file suits seeking to have their property and franchises assessed at 60% of their value for the purpose of taxation, and numerous individuals are threatening to and will file suit against appellants

and their successors in office to require the property owned by said individuals to be assessed at sixty (60%) per cent. of its actual cash value for the purpose of paying taxes to the State, counties and taxing districts of the State, and appellants say that all of the suits in which judgments have been entered and which are now pending, and in the suits so threatened to be filed as aforesaid, the same legal questions are involved as are involved in the instant litigation.

Appellants say that by reason of the judgments rendered and suits now pending, many hundreds of thousands of dollars which the State of Kentucky claims it is entitled to as revenue is withheld from the Treasury of the State, and the result is an amount is not collected sufficient to pay the governmental expenses of the State and to properly maintain its charitable and penal institutions, and this is caused to a very material extent by the inability of appellants as officers of the State of Kentucky to collect taxes, by reason of the litigation herein mentioned, upon the franchises of the various corporations doing business in the State, and by reason of said litigation and the judgments herein complained of the revenue laws of the State of Kentucky are thrown into inextricable confusion and all the officers interested in the levy and collection of revenue are uncertain as to what amount should be levied and what amount can be collected, and all this to the great detriment of the State, and to the proper administration of its laws, and to the positive injury of its governmental and business institutions.

Appellants further say that it is the intention of the Governor of the State to call a special session of the General Assembly of the State of Kentucky, which alone has the power to enact revenue laws, for the purpose of enacting a system of revenue laws conforming to the need of the people of the State and not in opposition to any

provisions of the Constitution of the United States, and it is necessary in order that such law be enacted that the questions arising in these cases be decided by this court.

M. M. Logan, Atty. Gen.
Counsel for Appellants.

Appellees join in motion to advance the above causes.

Alex. Pope Humphrey
*Counsel for Appellees.*

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

ROBERT L. GREENE, AUDITOR, ETC., - - - - - Appellants,
*vs.* No. 617.
LOUISVILLE & INTERURBAN RAILROAD COMPANY, - Appellee.

ROBERT L. GREENE, AUDITOR, ETC., - - - - - Appellants,
*vs.* No. 618.
LOUISVILLE RAILWAY COMPANY, - - - - - - Appellee.

ILLINOIS CENTRAL RAILROAD COMPANY, - - - Appellant,
*vs.* No. 642.
ROBERT L. GREENE, AUDITOR, ETC., - - - - - - Appellees.

ROBERT L. GREENE, AUDITOR, ETC., - - - - - Appellants,
*vs.* No. 643.
ILLINOIS CENTRAL RAILROAD COMPANY, - - - Appellee.

ILLINOIS CENTRAL RAILROAD COMPANY, - - - Appellant,
*vs.* No. 644.
ROBERT L. GREENE, AUDITOR, ETC., - - - - - - Appellees.

ROBERT L. GREENE, AUDITOR, ETC., - - - - - Appellants,
*vs.* No. 645.
ILLINOIS CENTRAL RAILROAD COMPANY, - - - Appellee.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, - Appellant,
*vs.* No. 778.
ROBERT L. GREENE, AUDITOR, ETC., - - - - - - Appellees.

ROBERT L. GREENE, AUDITOR, ETC., - - - - - Appellants,
*vs.* No. 779.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, - - Appellee.

## STATEMENT AND MOTION.

ROBERT L. GREENE, ET AL.,
By MILLS M. LOGAN AND
CHARLES CARROLL,
*Counsel.*

LOUISVILLE & INTERURBAN RAILROAD COMPANY AND
LOUISVILLE RAILWAY COMPANY,
By ALEXANDER POPE HUMPHREY,
*Counsel.*

ILLINOIS CENTRAL RAILROAD COMPANY,
By BLEWETT LEE AND
EDMUND F. TRABUE,
*Counsel.*

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
By HENRY L. STONE AND
HELM BRUCE,
*Counsel.*

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1916.**

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ROBERT L. GREENE, AUDITOR, ETC., - - - *Appellants,*

*vs.* No. 617.

LOUISVILLE & INTERURBAN RAILROAD COMPANY, - *Appellee.*

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ROBERT L. GREENE, AUDITOR, ETC., - - - *Appellants,*

*vs.* No. 618.

LOUISVILLE RAILWAY COMPANY, - - - - - *Appellee.*

---

ILLINOIS CENTRAL RAILROAD COMPANY, - - *Appellant,*

*vs.* No. 642.

ROBERT L. GREENE, AUDITOR, ETC., - - - *Appellees.*

---

ROBERT L. GREENE, AUDITOR, ETC., - - - *Appellants,*

*vs.* No. 643.

ILLINOIS CENTRAL RAILROAD COMPANY, - - *Appellee.*

---

ILLINOIS CENTRAL RAILROAD COMPANY, - - *Appellant,*

*vs.* No. 644.

ROBERT L. GREENE, AUDITOR, ETC., - - - *Appellees.*

ROBERT L. GREENE, AUDITOR, ETC., - - - *Appellants,*

*vs.* No. 645.

ILLINOIS CENTRAL RAILROAD COMPANY, - - *Appellee.*

---

LOUISVILLE & NASHVILLE RAILROAD COMPANY, - *Appellant,*

*vs.* No. 778.

ROBERT L. GREENE, AUDITOR, ETC., - - - *Appellees.*

---

ROBERT L. GREENE, AUDITOR, ETC., - - - *Appellants,*

*vs.* No. 779.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, - *Appellee.*

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## STATEMENT AND MOTION.

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Each of the above-styled cases is on appeal or cross-appeal from a judgment of the United States District Court for the Eastern District of Kentucky. The first six of these cases have, by an order heretofore entered, been advanced and directed to be heard as one case on December 4, 1916. The records in the last two cases were not filed in the office of the clerk of this court until November —, 1916, and the printing of them has not yet been completed. It is, therefore, not reasonably possible to have their printing completed in time for counsel to prepare briefs by December 4, 1916, the date for which

the hearing of the first six cases is set; but it is advisable that the last two cases be heard with the first six, for although there are in the cases of each Railroad Company certain questions peculiar to that company's cases, all the cases involve some common questions. Counsel feel confident, therefore, that it would be a saving of time to the court if all eight cases were heard as one; *i. e.*, if the order for hearing the first six cases as one be enlarged so as to include the hearing of the last two cases.

It would be impossible to properly present the questions in all of the eight cases—and, indeed, even in the first six cases—in the time allowed to one case; but counsel believe that they can fairly present the questions in all of the cases if three hours' time and three arguments be allowed to Greene, *et al.*, and four hours' time and four arguments be allowed to the Railroad Companies, and counsel will, subject to the court's pleasure, arrange among themselves the place in the oral argument which each counsel will take, and they have agreed, subject to the court's pleasure, that counsel for Greene, *et al.*, shall open the argument and counsel for the Railroad Companies shall close it.

It is the opinion of counsel for both sides that if the foregoing requests be granted, the time of the court will be economized and the litigants will be enabled to properly present to the court their several contentions.

In view of the time to be required to complete the printing of the transcripts of the last two cases, the court is requested to pass the cases, if it suit the convenience

of the court, to be heard on the earliest convenient day after January 1, 1917.

ROBERT L. GREENE, ET AL.,
By MILLS M. LOGAN,
AND
CHARLES CARROLL,
*Counsel.*

LOUISVILLE & INTERURBAN RAILROAD COMPANY,
AND
LOUISVILLE RAILWAY COMPANY,
By ALEXANDER POPE HUMPHREY,
*Counsel.*

ILLINOIS CENTRAL RAILROAD COMPANY,
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By HENRY L. STONE,
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HELM BRUCE,
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